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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/777,121	02/05/2001	Shanta Modak	A32359-A	8537

21003 7590 02/24/2003

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EXAMINER

KENNEDY, SHARON E

ART UNIT

PAPER NUMBER

3763

DATE MAILED: 02/24/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.  
09/777,121

Applicant(s)  
Modak et al. **MT**

Examiner  
Sharon Kennedy

Art Unit  
3763



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_\_.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 22-29 is/are pending in the application.
- 4a) Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 22-29 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some\* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_ 6) ☐ Other:

### **DETAILED ACTION**

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action or the MPEP.

#### ***Information Disclosure Statement***

2. The prior art considered in the parent application 09/281,872, has been considered herein. Applicant should submit a PTO-Form 1449 listing those references.

#### ***Double Patenting***

3. Claims 22-29 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-16 of U.S. Patent No. 6,083,208. Although the conflicting claims are not identical, they are not patentably distinct from each other because the patent is also directed to a gel (polyurethane) in combination with a metal compound and triclosan.
4. Claims 22-29 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-26, 31-33, 45-55 of U.S. Patent No. 6,106,505. Although the conflicting claims are not identical, they are not patentably distinct from each other because the patent is also directed to a gel (polyurethane) in combination with a metal compound and triclosan.
5. Claims 22-29 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-23, 28-30 of U.S. Patent No. 5,772,640. Although the conflicting claims are not identical, they are not patentably distinct from each other

because the patent is also directed to a gel (polyurethane) in combination with a metal compound and triclosan.

***Claim Rejections - 35 USC § 102***

6. Claims 22-29 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Modak, US 5,567,495. Modak discloses triclosan in column 7, line 45, various silver antibiotics and in addition, polyurethane, silicone, polyethylene oxide, e.g., which for gels, as additives to the treatment solution. See, for example, column 14, lines 55+. The weight percents claimed are broad and disclosed by Modak. Accordingly, the claims are anticipated. Regarding claim 24, note that Modak discloses that povidone iodine (col. 7, line 44) may be used, which is the combination is polyvinyl pyrrolidone and iodine. Regarding claim 29, note that Teflon rings, seals, patches, etc., (column 8, lines 16+) and may be permanent (col 8, line 10), which anticipates the claimed PTFE graft.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sharon Kennedy whose telephone number is (703) 305-0154.

February 24, 2003

*Sharon Kennedy*  
Sharon Kennedy  
Primary Examiner